



State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

Education of Incarcerated Students

1. **Are students who are being held in the county jail or in a secure detention center entitled to an education?**

Yes. The Wisconsin Constitution guarantees a free education for all children ages 4 through 20 who have not graduated from high school.

2. **If a student is being held in a facility that is not in the school district where he/she normally resides, who is responsible for providing his/her education?**

The school district in which the facility is located. See *State ex rel. School District No. 1 of Waukesha v. Thayer*, 74 Wis. 48 or 41 N.W. 1014 (1889). The court ruled that for school purposes, the child who resides away from his parents' home is considered a resident of the school district in which the child actually resides rather than the one in which the parents live, so long as the child's primary purpose for residing away from his parents is other than to attend the schools of the district in which the child actually resides. Further, the Wisconsin Constitution, under article 10, section 3, establishes a child's right to an education. The requirement of the local school district to provide free public elementary and secondary education to resident children is stated in §121.77(1), Stats., as follows: "Every elementary school and high school shall be free to all pupils who reside in the district." Both the *Thayer* decision and §121.77(1), Stats., apply to children who are residents of Wisconsin and the district.

3. **If a student is being held in a facility, who counts the student for aid and revenue limit purposes?**

If the student attended at his traditional district (where the parent resides) on the count day, the school where the student would traditionally attend counts the student.

If the student attended at his traditional district (where the parent resides) at least one day prior to and one day after the count date, the school where the student would traditionally attend counts the student.

The school district where the facility is located is responsible for educating the detained student and is eligible to apply for state tuition reimbursement and does not count the student for aid and revenue limit purposes. See question #12 on applying for state tuition reimbursement.

If a student is detained in a facility located in the school district where the student normally resides, the district may count the student for aid and revenue limit purposes, but is not eligible for state tuition reimbursement.

A student who has not attended school at least one day prior to incarceration is not counted by any district. The district where the facility is located is eligible for state tuition reimbursement for the time in which the student is detained and is being educated.

4. Does the interpretation of residency for education purposes differ from the definition of residency for finance and school count date purposes?

Yes, under the Thayer decision, quoted in question #1, a student's residency is determined by where the student sleeps at night. For school finance purposes, it is traditionally assumed that the parent or guardian's home determines residence.

5. Can the student continue to work on his/her school assignments from the district where he/she normally resides?

The school district in which the facility is located may seek to obtain assignments from the student's previous district if it is likely that the student will return to that district.

6. Is the length of time in which a student is held in the jail or detention facility relevant to which district is technically responsible for the provision of an education?

The length of time is not relevant to the fact that the school district in which the facility is located must provide free public education for the individuals eligible for these services just as they do for others who are residents of the school district. A school district has no authority to deny enrollment to a resident of that district. Under *Thayer*, the "primary purpose" for which the student is present in the district is no different on the first day, absent a change of circumstances, than on the last day.

7. If a student who was previously "expelled," "home schooled," or considered a "dropout" requests educational services while in detention, must the responsible school district provide those services?

Expelled students: A school district is not required to enroll a student during the term of his/her expulsion from another school district. Upon request, the school district which expelled the pupil shall send the other district a copy of the expulsion findings and order, a written explanation of the reasons why the pupil was expelled and the length of the term of expulsion. §120.13(1)(f), Stats. A school district has the authority to choose to enroll a student expelled by another district.

Home schooled students: Unless the facility makes arrangements for the parent to provide home-based private education consistent with §118.165, Stats., the student who was

home schooled should be enrolled in the resident district and provided educational services.

Dropouts: If the student is between the ages of 18 and 21, has not graduated, and requests services, the district is required to provide educational services to the student. If the student is under 18 years of age, and has not graduated or completed a high school equivalency program, educational services are required to be provided, whether or not the student requests the services.

8. Is there a reasonable length of time for a school district to respond to notification that an eligible student is in detention or incarcerated before educational services should commence?

No reasonable length of time is listed in statute. Some districts begin services after the student has made their initial appearance in court if this is a new arrest. For students who are detained for probation violations or serving sentences, services should begin immediately. See Question 4 above.

9. Is there any requirement for the type or level of educational services to be provided to students receiving services in jail or some other form of detention, including summer school?

State statutes make no mention of suspending educational standards for students receiving educational services in jail or detention. Federal law is very clear that educational services prescribed under a student's individual education plan (IEP) established for a student with special education needs continue unless an IEP team is reconvened for the purpose of modifying the IEP.

10. May students who request and are granted educational release under the Huber Law attend a local school building for educational services while serving their sentences?

Yes.

11. Who is able to discipline students receiving services while in detention or jail?

Student behavior in detention or jail is governed both by the facilities' rules of conduct as well as the rules and code of conduct issued by the school board under the authority of §120.13(1), Stats.

12. May 17 year olds or youth "waived" into adult court jurisdiction receive educational services in the same setting? May they be educated with youth under juvenile court jurisdiction who are being held in secure juvenile detention?

All youth being held in the jail as "adults" for criminal purposes may be educated together. They may not be educated with other youth who are being held in juvenile

detention or being held as juveniles in the county jail, because federal law mandates that “sight and sound separation” must exist between “juveniles” and “adults.” As to these two groups, educational services must be provided in a “sight and sound separation” manner.

13. Who pays for the educational services provided? Is there any state assistance for the costs associated with these services?

The Department of Public Instruction reimburses the school district through the Tuition Payment (state tuition) appropriation under §20.255(2)(cg), Stats. §121.79(1), Stats., provides: “The state shall pay tuition from an appropriation under §20.255(2)(cg) for pupils attending school in the following cases: (a) for pupils in children’s homes...” For the purposes of payment of tuition by the department, “children’s homes” have historically been defined through an Attorney General’s Opinion and by past practice of the department to include secure juvenile detention facilities and county jails, as well as many other types of facilities.

14. Who is responsible to notify the school district when a student leaves detention or jail?

The jail and detention staff should work out a system with the local school district to notify the district when a student is detained or released. Similarly, the district should notify the school district where the student is likely to attend i.e., district of new placement, “home” district, that the student is no longer in residence in the facility’s district.

15. What happens with enrollment and exit dates as it pertains to the Wisconsin Student Locator System (WSLS)?

The school district where a county jail or secure detention center is located is responsible for providing educational services for youth while they reside in such facilities. This will typically mean a movement between schools if the district where the facility is located is not the district where the parents live. The enroll date in the new district should be the date the student initially receives educational services from the new district. Districts often begin services after it is known that the student will be staying at the facility, e.g. after the initial appearance in court if not sooner. Under any circumstances, if a student is present at a school for a total of less than one full day, then submission of a school enrollment record is not expected or required. Such an enrollment record would have the same enrollment and exit date and so, beginning with 2004-05, would be ignored by ISES.

16. Who should I contact for additional information?

For program questions contact: Beth Lewis, Wisconsin Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841. Phone: 608/267-1062 email: beth.lewis@dpi.state.wi.us

For fiscal questions about state tuition reimbursement contact: Lori Ames, Wisconsin Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841. Phone: 608/266-3464, email: lori.ames@dpi.state.wi.us

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